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No. 80-51

In The

SUPREME COURT OF THE UNITED STATES

1980 Term

CHARLES A. BRIDGES,
Appellant,

v.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MENTAL HEALTH AND
MENTAL RETARDATION,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF VIRGINIA

MOTION TO DISMISS
AND
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

Marshall Coleman
Attorney General of Virginia

James E. Moore
Assistant Attorney General

William H. Hurd
Assistant Attorney General

1101 East Broad St.
Supreme Court Bldg.
Richmond, VA 23219

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QUESTION PRESENTED

Does the Appellant's Jurisdictional Statement raise a substantial federal question as to whether the Commonwealth denied him equal protection or due process of law?

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§§ 37.1-105 through 37.1-119 of the Code of Virginia (1950), as amended . . . . passim

MOTION TO DISMISS

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Comes now the Appellee, Commonwealth of Virginia, Department of Mental Health and Mental Retardation, by Counsel, and moves this Court dismiss the appeal filed herein on the grounds that it does not present a substantial federal question. In support whereof, the Appellee says:

1.) The Appellant clearly fails to raise any substantial issue of equal protection since there is an obvious rational basis for the distinction created by the statutes to which he objects, §§ 37.1-105 through 37.1-119 of the Code of Virginia (1950), as amended.

2.) The Appellant clearly fails to raise any substantial issue of due process since the record shows that he received a

complete hearing prior to the determination of his legal rights and prior to any state action touching upon his constitutionally protected interests.

3.) The Appellant clearly fails to raise any substantial issue as to whether the Commonwealth acted arbitrarily in administering §§ 37.1-105 through 37.1-119, since the record fails to show that he was treated less favorably than persons of similar financial condition and estate.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

STATEMENT OF FACTS

The Commonwealth would draw the Court's attention to the following facts, which bear most directly upon its claim that the Appellant has raised no substantial federal question:

1. Pursuant to Virginia law, the Commonwealth of Virginia, Department of Mental Health and Mental Retardation, brought a civil action against the Appellant, Charles A. Bridges, to compel him to pay for the care, treatment and maintenance furnished his wife in Western State Hospital.

2. After conducting a full hearing, the trial court found that the Appellant was liable for the amount claimed by the Commonwealth, said court having complied with the

statutory standard by taking into account the Appellant's ability to pay the charges assessed against him.

3. The Commonwealth made no attempt to levy upon or seize the property of the Appellant prior to a full hearing nor does the statute of which the Appellant complains allow for such summary, ex parte action upon a claim for mental health expenses.

4. Said decision to seek a court order compelling Appellant to pay was not arbitrary but was based on financial data provided the Department of Mental Health and Mental Retardation by the Appellant, and on the Appellant's refusal to pay voluntarily.

ARGUMENT

1.) The Appellant clearly fails to raise any substantial issue of equal protection since there is an obvious

rational basis for the distinction created by the statutes to which he objects, §§ 37.1-105 through 37.1-119 of the Code of Virginia (1950), as amended.

In reviewing Appellant's claim that he has been denied equal protection, it is helpful to focus first on the nature of the distinction to which he objects. He says that "the state has arbitrarily chosen to enforce the duty [of support] against the families of the mentally ill, while at the same time exempting the families of others involuntarily incarcerated." (Appellant's Jurisdictional Statement at page 19.) Although he frequently uses such general terms as "others involuntarily incarcerated," it is clear that he is talking about only one specific category of persons--those in jails and prisons. His complaint is that

families of state mental patients are liable for the patients' care, treatment and maintenance while families of prisoners have no similar liability.

Since this case obviously does not involve a suspect classification or touch on fundamental rights, there is no need for strict scrutiny. The appropriate equal protection analysis is simply whether the distinction bears some rational relationship to a conceivable legitimate state interest or purpose. See Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459 (1976). The Commonwealth contends that this standard is clearly met by its statutes, §§ 37.1-105 through 37.1-119.

Although mental health hospitals and prisons often share the common element of involuntary confinement, there is an obvious, common sense distinction between the two which the legislature no doubt had in mind in

drawing the distinction of which the Appellant complains. A primary purpose of mental health hospitals is to benefit the patient by providing him treatment and an environment in which he will not be dangerous to himself or others. Thus, it is appropriate that the patient be charged with the costs of his care, treatment and maintenance. Likewise, if he is unable to pay, it is appropriate that members of his immediate family, who have a moral duty of support, be asked to pay in so far as they are able to do so.

Prisons are quite different. Although they often make some attempt to rehabilitate inmates, the basic fact of confinement is predicated upon a need to punish the offender and protect society from violence or fraud. Although a state might well decide to charge the prisoner with the costs of his confine-

ment, it would be a far different matter to make the prisoner's family pay for his food and clothing or the salaries of his guards. It would, in fact, raise serious questions of equity and due process to impose such monetary burdens upon a man's innocent relatives as a consequence of his criminal conviction. It is one thing to ask that a man's family help shoulder the cost of trying to restore his health. But it is a far different matter to impose upon them a portion of the penalty for another individual's misconduct. Thus, it should be clear that the distinction which the Commonwealth has drawn bears a rational relationship to legitimate state purposes--reimbursing the state treasury for the services provided by its mental health hospitals and maintaining an equitable system of criminal justice.

2.) The Appellant clearly fails to raise any substantial issue of due process since the record shows that he received a complete hearing prior to the determination of his legal rights and prior to any state action touching upon his constitutionally protected interests.

The Appellant claims that the Commonwealth denied him due process of law. Yet, he does not allege that there was any taking of his property prior to a hearing, nor does he suggest that the hearing he received was biased or otherwise unfair. Instead, he objects to the Commonwealth's initial decision to bill him for the care provided his wife. Due process was violated, he says, because there was no opportunity for a hearing before any charges were assessed. Under Virginia law, the obligation of a

spouse to reimburse the Department for its expenses is limited to the spouses' ability to pay. See esp. §§ 37.1-109 and 37.1-110. (Appellant's Jurisdictional Statement, Appendix, page 15a through 20a). Appellant seems to believe that he is entitled to a hearing before he is billed so that he might challenge the Commonwealth's evaluation of his financial ability. The Commonwealth contends that such an argument by the Appellant fails to raise any serious issue before this Court. Due process requires a hearing before any taking of property, but it does not require a hearing before the state can inform an individual of its claim of indebtedness. In accordance with due process, the Appellant received a complete hearing in the Circuit Court of the County of Fairfax, Virginia. (See Order of Court, Appellant's Jurisdiction Statement, Appendix page 2a). At that time, he had the opportunity to raise

all defenses to which he thought himself entitled, including any suggestion that he was unable to pay. In fact, the trial court expressly considered the financial condition and the estate of the Appellant, as well as his present and future needs, but found that he did have sufficient ability to pay for the expenses of his wife. (See Appellant's Jurisdictional Statement, Appendix page 3a, paragraph 4.)

It is also clear that the authorities cited by the Appellant do not support his position. The Appellant cites Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983 (1972), cert. denied, 409 U.S. 902, 93 S. Ct. 180 (1972), for the proposition that notice and hearing must be granted at a meaningful time. In Fuentes, the Court struck down Florida and Pennsylvania statutes by which plaintiffs could obtain summary, pre-judgment seizure of property. Even though those statutes allowed

a post-seizure hearing, the Court found that due process had been violated and noted that:

> "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented." 407 U.S. 67, 81, 92 S. Ct. 1983, 1994.

In the present case, there was no summary, pre-judgment seizure of property. The hearing in the trial court was timely since it was a necessary first step in the Commonwealth's attempt to enforce its claim.

In Hannah v. Larche, 363 U.S. 420, 80 S. Ct. 1502 (1960), the question involved investigations by the U.S. Commission on Civil Rights into alleged civil rights violations. In deciding that witnesses summoned before the Commission did not have the right to confront or cross-examine complainants, the Court said that:

> "When governmental agencies adjudicate or make binding determinations which directly affect the legal rights of

> individuals, it is imperative that those agencies use the procedures which have traditionally been associated with judicial process. On the other hand, when governmental action does not partake of an adjudiciation, as for example, when a general fact finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used." 363 U.S. 420, 442, 80 S. Ct. 1502, 1514, 1515.

Since the Commonwealth's evaluation of an individual's ability to pay is not a binding determination and does not directly affect his legal rights, the Hannah case does not require the Commonwealth to hold a hearing before deciding whether or how much to assess a patient's spouse.

The case of Morgan v. United States, 304 U.S. 1, 58 S. Ct. 773 (1937), also fails to furnish Appellant with any reliable authority for his position. In Morgan, the administrative proceedings were quasi-judicial in nature, being conducted by the Secretary of Agriculture to determine whether the charges

for certain stockyard services were reasonable. In that case, the administrative procedings involved an adjudiciation of fact which directly affected constitutionally protected interests. Thus, there is no similarity with the present case where the action of the Commonwealth in billing the Appellant does nothing to deprive him of any interest whatsoever. The Commonwealth is in the same position here as any other creditor and has no power to take the debtor's property until it has first obtained a judgment in a court of law.

Similarly, the Appellant's reliance on the Michigan case of Miller v. State Department of Revenue, 188 N.W. 2d 795 (1971) is misplaced. That case bears a superficial similarity to the present one in that it also involved determinations by a state agency as to the financial ability of relatives of state mental patients. But the

Michigan statutes were quite different from Virginia law in that an execution could be obtained in Michigan solely on the assessment of the state agency and without any hearing whatever. See 188 N.W. 2d 795, 800, note 14. Since the Virginia statutes require a court hearing before any execution can take place, the due process problem inherent to the Michigan law does not exist here and the Miller case is wholly inapplicable.

3.) The appellant clearly fails to raise any substantial issue as to whether the Commonwealth acted arbitrarily in administering §§ 37.1-105 through 37.1-119, since the record fails to show that he was treated less favorably than persons of similar financial condition and estate.

Intermingled with the argument that he deserved a hearing prior to the assessment of his bill, the Appellant also suggests that the Commonwealth might be applying its statutes arbitrarily, thus denying equal protection. He suggests that the Commonwealth might be acting unfairly by billing him while sparing others "who really can pay." (See Appellant's Jurisdictional Statement at page 27.) Such a suggestion is sheer speculation. To show that unequal administration of a state statute offends the equal protection clause, one must show an intentional or purposeful discrmination. Whitney Stores, Inc. v. Summerford, 280 F.Supp. 406 (D.C.S.C. 1968), aff'd 373 U.S. 9, 89 S. Ct. 44. If Appellant had any facts with which to support such a theory, he had a complete opportunity to present them before the trial court. But even today, Appellant has

not pointed to any evidence to indicate that he was treated differently than any other person of similar financial condition and estate.

CONCLUSION

In consideration whereof the Appellant, Commonwealth of Virginia, Department of Mental Health and Mental Retardation moves this Court to dismiss the instant appeal for failure to raise a substantial federal issue.

Respectfully submitted,

Commonwealth of
Virginia, Department of
Mental Health and Mental
Retardation

By: _____
Counsel

Marshall Coleman
Attorney General of Virginia

James E. Moore
Assistant Attorney General

William H. Hurd
Assistant Attorney General

1101 East Broad Street
Supreme Court Building
Richmond, Virginia 23219

Certificate of Service

I hereby certify that on this 28TH day of August, 1980, I served three copies of the foregoing Motion to Dismiss and Memorandum in Support of Motion to Dismiss on Kaletah N. Carroll, 4015 Chain Bridge Road, Post Office Box 434, Fairfax, Virginia 22030 by mailing the said copies by United States mail, postage prepaid and properly addressed.